Criminal Appeal No.67 of 1988

(Against the judgment and order dated 21.1.1988 passed by the Vth Additional Sessions Judge,Munger in Sessions Case No.64 of 1980/Sessions Case No.596 of 1985)

Chethru Yadav … Appellant

Versus

State of Bihar ...Respondent

For the Appellant : Mr.Rama Kant Sharma, Sr.Advocate
M/s Lakshmi Kant Sharma, Rajesh Kumar

For the Respondent : Learned Public Prosecutor

P r e s e n t

THE HON'BLE MR.JUSTICE SUDHIR KUMAR KATRIAR
THE HON'BLE MR.JUSTICE SAMARENDRA PRATAP SINGH

SK Katriar &
SP Singh,JJ

The instant appeal by the sole appellant is directed against the judgment and order of conviction dated 21.1.1988, passed by the Vth Additional Sessions Judge, Munger, in Sessions Case No.64 of 1980, heard analogous with Sessions Case No.596 of 1985, whereby he convicted the appellant Chethru Yadav under sections 364, 302/34, 201 of the Indian Penal Code, and sentenced him to rigorous imprisonment for life under sections 364 and 302 of the I.P.C., and four years under section 201 of the I.P.C. However, both the sentences were ordered to run concurrently. The other accused, namely, Janki Yadav and Prabhu Yadav in Sessions Case No.64 of 1980, and Shanti Singh and Indradeo Singh in Sessions Trial No.596 of 1985, who jointly faced trial for charge under section 302/34 of the Penal Code, and section 201/34 of the Penal Code, were acquitted by the impugned judgment.

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2. The prosecution case, as made out in the fardbeyan of one Soniya Devi, wife of Jhari Yadav, resident of Village Bishanpur, P.S. Sono, recorded by A.S.I. Indrajeet Singh of Sono P.S., on 13.11.1978, at 7.35 P.M., at her house, in short, is as follows:-

(i) The informant stated that her son Arjun Yadav had illicit relationship with the wife of appellant Chethru Yadav, son of Munna Yadav, of the same village.At about 1 P.M., on 11.11.1978, a Saturday, she had gone to Kashoi Ahra for cutting grass. She

saw Chethru Yadav (appellant),Janki Yadav, Shanti Singh, Indradeo Singh, holding meeting beneath a Simal tree, and one Prabhu Yadav was also cutting grass in the nearby field. She stated that her son Arjun Yadav who had gone to Sono, returned home in the evening by which time she had also came back after cutting grass. The informant's son thereafter took his meal, and was just loitering outside his house; One Chethru Yadav, who is named above, came and called him to accompany him. On being questioned, ArjunYadav stated that he is going out with Chethru Yadav and would return in a short time. The informant stated, that Karu Sah and some other people witnessed her son going together with Chethru Yadv. Her son was wearing one black colour lungi and was also having a watch in his hand. The informant stated that when her son did not return home that night, she went looking for him to the house of Chethru Yadav the following morning. The informant once again found all the aforesaid persons named above, sitting with Chethru Yadav in his house. The informant enquired about her son. To a query regarding the whereabouts of her son, Chethru Yadav feigned ignorance. The informant thereafter made a search of him at various places without any success. She was fully sure that Chethru Yadav and his associates had killed her son and has done away with his dead body to hide evidence.

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On the basis of the aforesaid fardbeyan (Ext.3) a formal F.I.R. being Sono P.S.Case No.3 of 1978 was instituted which has been marked as Ext.4. After investigation the Police submitted charge sheet under sections 364, 302,201 of the I.P.C. and cognizance of offence under the aforesaid sections was taken and the accused persons were summoned to face trial. Thereafter the case was committed to the court of sessions and charge under sections 364, 302/34 and 201 of the Penal Code was framed against Chethru Yadav, and charge under section 302/34 and 201/34 of the Penal Code was framed against other accused persons mentioned aforesaid. The appellant and the other accused persons pleaded not guilty and claimed to be tried.

3. The prosecution examined five witnesses in support of its case, namely, Bhola Singh (P.W.1), Karu Sah (P.W.2), Soniya Devi (P.W.3), Phuleshwar Yadav @

Phuldeo Yadav (P.W.4) and Kartik Prasad (P.W.5). Out of the aforesaid five witnesses, only Soniya Devi (P.W.3), and Phuleshwar Yadav @ Phuldeo Yadav (P.W.4), are material witness who have deposed on the point of occurrence. Karu Sah (P.W.2), who has been cited as an eyewitness in the F.I.R., turned hostile. Bhola Singh (P.W.1), and Kartik Prasad (P.W.5), both Advocate's Clerks are formal witnesses.

4. Bhola Singh (P.W.1) is a formal witness. He is an Advocate Clerk and has identified the handwriting of A.S.I. Ranjeet Singh who had recorded the fardbeyan of P.W.3, and has been marked as Ext.1.

5. P.W.2 Karu Sah, who has been cited as an eyewitness in the F.I.R., did not support the prosecution case in his examination-in-chief, and has been declared hostile. However, he has admitted that the informant P.W.3 was enquiring about the where-abouts of her son. Except for what has been mentioned above, it would be futile to examine his evidence in detail. Detailed examination of his evidence would not serve any useful purpose.

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6. Soniya Devi (P.W.3), the informant of this case, has substantially supported the prosecution case in her deposition. She stated that on the relevant date of occurrence she was cutting grass in Kashoi Ahra and round about that time Chethru Yadav (appellant), Janki Yadav, Shanti Singh, Indradeo Singh were holding a meeting beneath a Simal tree, and Prabhu Yadav was cutting grass nearby. After cutting grass, she returned to her house. Her son Arjun Yadav, also returned from Sono, round about 6 P.M. and took his meal. In the meantime, Chethru Yadav came to her house and her son went out with him. On being enquired, her son Arjun Yadav said that he would return soon. However, when Arjun Yadav did not return, at about 7.30 P.M. the informant went to the house of Chethru Yadav to look for him. She found the other associates of Chethru Yadav referred above also in the house. On being asked by the informant regarding the where-abouts of her son, Chathru Yadv gave an evasive reply. The informant along with one Diwakar Yadav and others searched her son, from house to house. One Karu Sah (P.W.2), who turned hostile in the witness, informed

her that he had seen his son Arjun Yadav going along with Chethru Yadav and his associates towards Karbala. She further stated that Karbala was about 50 yards from Kashoi Ahra. She stated that belongings of her son were found under a 'Tar' tree in Karbala. She stated that the dead body of her son was recovered from Bithu river, which flowed at a short distance from Karbala. She stated that her son was entangled with the wife of Chethru Yadv. She identified the joint photograph of her deceased son and Shobhi Devi,wife of Chethru Yadav which has been marked as material Ext.1. The photograph was produced in the court by the leaned P.P. She stated that some months back she had told the villagers about the entanglement of her son with the wife of Chethru Yadav. She stated that the house of Chethru Yadav is 50 yards in the east. She stated that Arjun Yadav is married but his wife is still at her paternal house as Gauna (second marriage) has not been peformed. She stated that Chethru Yadav is her raiyat and has killed her son as the latter was entangled with his wife.

7. Phuleshwar Yadav @ Phuldeo Yadav (P.W.4) is brother of the deceased and son of the informant (P.W.3). He stated that on the relevant date of occurrence, Chethru Yadav came in the evening and called for his brother. This witness came out of his house and saw his brother going with Chethru Yadav and four accused persons named in the F.I.R. towards the Karbala. He stated that he raised hulla, but no one from the village came. After some time, he began to look for his brother along with others in the night itself. He stated that the following morning her mother went to the house of Chethru Yadav, to enquire about her son. He stated that he went to the Police Station along with village Chawkidar. Thereafter police also came with him and found clothes and other belongings of his brother, which he duly identified. In course of search, the headless body of Arjun Yadav was found buried in nearby Bithu river. He stated that Karbala is situated very close to Bithu river. He identified the dead body to be of his brother Arjun Yadav. He identified the signature of witnesses on the inquest report, which are marked Ext.2 and 2/1. He stated that his house is at a distance of 600 yards from Karbala. He stated that he waited for his brother to return till late in the

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night and thereafter he informed other people that he was missing. The following morning he made a search along with local Chawkidar. He too stated that Karu Sah informed him that he had seen his brother going along with the accused persons on the date of occurrence in the evening.

8. Kartik Prasad (P.W.5) is a formal witness and identified the signature of Ram Ayodhya Singh, Officer-Incharge of Sono P.S., who prepared the inquest report, which has been marked as Ext.5. He also identified the handwriting of A.S.I. Ranjeet Singh, who recorded fardbeyan and had put his signature on it, which is marked as Ext.1.

9. The post mortem report (Ext.7) is also on record. It would appear from the post mortem report that the head was chopped off, and the deceased also sustained incised wound on the arm.

10. On consideration of the materials on record, the learned trial court held that the prosecution has succeeded in proving the charge under sections 364/302 and section 201 of the Indian Penal Code against the appellant. The trial court has found that the defence has not refuted the allegations of entanglement of the deceased with the wife of appellant. It further found that P.W.3 and P.W.4 consistently stated that the appellant came to the house of the deceased on 11.11.1978 in the evening, where after he did not return. The very next day his belongings and dead body were recovered from Karbala and river Bithu flowing nearby. The dead body has been duly identified by the family members of the deceased. He also found that the appellant buried the dead body in river Bithu to hide evidence. The learned trial court did not find adequate materials against other accused, namely, Janki Yadav, Prabhu Yadav, Shanti Singh and Indradeo Singh, and they were acquitted of their respective charges.

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11. Learned counsel for the appellant submits that no witness has claimed to have seen the commission of actual murder. He submits that the case is based on circumstantial evidence. He submits that in case of circumstantial evidence every chain of circumstances pointing towards the guilt of the accused must be cogently and

firmly established. He submits that in this case some of the important links are missing. He further submits that the appellant did not have any motive to kill the deceased Arjun Yadav and relationship between them was normal, otherwise the deceased would not have gone with the appellant Chethru Yadav at his call. He submits that the joint photograph of the deceased with the wife of the appellant cannot be relied upon, as the I.O. who had handed over the photograph (material Ext.1), was not examined. He submits that there has been delay in forwarding the F.I.R. and no witness has come forward to state that any one of them saw the deceased accompanying appellant on the date of the occurrence or even on the following day. He submits that the informant (P.W.3) in the fardebeyan (Ext.1), says that she went to the house of appellant Chethru Yadav on the following day i.e. in the morning of 12.11.1978, whereas in her deposition she stated that she had gone to the house of the appellant in the same evening, at about 7.30 P.M. He submits that had P.W. 3 informed the villagers regarding illicit relationship of her son with the wife of appellant, a Panchayati would have been convened. He submits that there is considerable time gap between the person seen together and proximate time of crime and the same is not enough to fasten the guilt on him. In support of his contention he relied upon decisions of the Apex Court in the case of Hukum Singh Vs State of Rajasthan, A.I.R.1977 SC 1063 and in the case of State of Goa Vs Sanjay Thakran & another, 2007(3) SCC 755.

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12. Learned Public Prosecutor submits that complete chain of circumstances pointing towards the guilt of the accused has been proved by cogent evidence. He submits that non-examination of the I.O. and the Doctor has not caused any material prejudice to the defence, as the statements of the witnesses are consistent. He submits that seizure of clothes and recovery of the beheaded body of the deceased point towards the guilt of the accused. He submits that the appellant had strong motive for killing the deceased as the latter was entangled with the wife of the appellant.

13. Before we deal with the contentions of the learned counsel for the appellant, we would like to examine the law in respect of circumstantial evidence. It is not uncommon that there are cases in which there could be no direct eyewitness of the commission of actual offence, but this would not mean that the person involved in the crime would escape conviction on this score alone. In such cases, circumstantial evidence assumes significance. If the circumstances unerringly point towards the guilt of the accused, or if the circumstances cumulatively form a chain so complete that there is no escape from the conclusion that within all human possibility the crime was committed by the accused and none else, the guilt could be fastened on the accused.

14. The Apex Court in the case of of Hukum Singh Vs State of Rajasthan, A.I.R.1977 SC 1063 while examining the case based on circumstantial evidence observed as follows:

> "7. It is now settled law that in case of circumstantial evidence, all the incriminating facts and circumstances should be fully established by cogent and reliable evidence and the facts so established must be consistent with the guilt of the accused and should not be capable of being explained away on any other reasonable hypothesis than that of his guilt. In short, the circumstantial evidence should unmistakably point to one and one conclusion only that the accused person and none other perpetrated the alleged crime….."

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15. In the case of State of Goa Vs Sanjay Thakran & another, 2007(3) SCC 755 the Apex Court was also considering the case based on circumstantial evidence on the plea of being last seen. The case of the defence was that in the absence of any link in the chain of circumstantial evidence, it is not possible to convict the appellant solely on the basis of last seen evidence. After hearing the parties, the Hon'ble Apex Court in paragraph 34 observed as follows:

> "34.From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration……..".

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16. In the light of aforesaid principles laid down by the Apex Court, we hereby set to examine whether the circumstances formed a complete chain pointing conclusively towards the guilt of the appellant? P.W. 3 in her fardbeyan as well as in her deposition stated that while she was cutting grass in Kashoi Ahra, the appellant Chethru Yadav, Janki Yadav, Shanti Singh, Indradeo Singh, all co-villagers were holding meeting under a Simal tree and one Prabu Yadav was also cutting grass near by. Further P.Ws 3 and 4 stated that the appellant came in their house in the evening of 11.11.1978, and called the deceased Arjun Yadav. Thereafter the latter did not return. On the following morning, when P.W. 3 went to the house of the appellant Chethru Yadv to enquire about the where-abouts of her son, all persons mentioned above were present in the house. On being questioned, Chethru Yadav did not provide any plausible explanation regarding the where-abouts of her son. It would appear that in spite of strenuous search,

Arjun Yadav was no where to be found. Even Karu Sah (P.W.2) who turned hostile admitted that the informant was inquiring about her missing son. On the following day, the belongings of the deceased, for instance, his blood stained gamcha (Ext.6), and underwear (Ext.6/1), were recovered. Further more from the beneath of Tar tree in Karbala, the wrist watch of the deceased was found lying. They also found blood all around the place. With the aid of local police, a body without head was recovered from river Bittu, flowing near Karbala. P.W.4, who would be a very competent person, identified the dead body to be that of his brother. The circumstances narrated above points to the continuity of events, unerringly pointing towards guilt of accused.

17. The post mortem report would also show that the deceased was brutally killed and his head was chopped off from the body. The time elapsed since death as stated in the post mortem report dated 16.11.1978 is also in conformity with the prosecution case.

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18. It would also appear that P.Ws 3 and 4 consistently stated that the deceased was entangled with the wife of the appellant, and as such the latter had a motive for killing him. Even at the stage of examination under section 313 Cr.P.C., the attention of the appellant was drawn towards the joint photograph of his wife with the deceased. The appellant did not outrightly deny that the photograph is not of his wife or the same is manufactured. The very fact that the appellant was trying to be evasive on the point of identifying the photo of his wife, is also an additional circumstance which points towards his guilty mind. It is an admitted fact that the deceased was not seen after he was taken away by the appellant and others. The recovery of his belongings from under a 'Tar' tree in Karbala, and the burial of his dead body in Bithu river flowing nearby to Karbala, complete the chain of circumstances, and unerringly point towards the guilt of the appellant. An attempt was made to impress that the deceased had some contractual dispute with Indradeo Singh and Shanti Singh, but no document was brought on

record in proof of the same. The reported judgments cited by learned counsel for the appellant in the case of State of Goa Vs Sanjay Thakran & another (Supra) would not be of much help. In the instant case, we find that the duration of time-gap between the appellant being seen with the deceased and the proximate time of crime was quite thin and short. The belongings of the deceased found beneath a 'Tar' tree in Karbala which is only 600 yards from the Basti (village) would show that he was murdered by the appellant soon after he was called out from his house without much loss of time. This was the reason that he was not seen by any other villager either in the night or the morning following. The post mortem report would also show that the deceased was murdered within six days of his autopsy which is in consonance with the prosecution case vis-à-vis his time of missing. Thus, we find that the aforesaid case relied upon by the learned counsel for the appellant is not of much help to him.

19. This takes us to the next issue, whether the evidence of P.W.3 is trustworthy or not. There is some contradiction in the statement of P.W.3 regarding the time that she went to the house of Chethru Yadav, to make enquiry about his son. In the fardbeyan, she stated that she went to the house of the appellant in the morning of following day i.e. 12.11.1978, whereas in her deposition she stated that she visited the house of the appellant the same evening, at about 7 P.M. The contradiction, in our view, is not of a substantial nature. The important fact is that she had gone to make an enquiry from the appellant regarding the where-abouts of her son, with whom the deceased had gone. P.W.4 stated that his mother P.W.3 went to enquire from the appellant the next morning, which is in consonance with her statement in fardbeyan. The contradiction in the statement of the informant is of a minor nature and would not make her statement unreliable on this score.

20. The plea of the appellant that there has been delay in forwarding the F.I.R. to the court, and thus there could have been some manipulations, is also not

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corroborated by any material evidence. We find that fardbeyan was recorded on 13.11.1978, at 7.30 P.M., and the F.I.R. was forwarded to the court of the Magistrate concerned on 14.11.1978, and was signed by the S.D.J.M. on 16.11.1978.The defence has not produced any material on record to show that there was any possible manipulation(s).

21. In the instant case, we find that non-examination of the I.O. has not caused any material prejudice to the appellant. P.Ws 3 and 4, save and except few minor contradictions, have consistently corroborated the prosecution case in their depositions before court. The stains of blood and belongings of the deceased found beneath a 'Tar' tree in Karbala and recovery of dead body from nearby river Bithu, the inquest report (Ext.5) and the post mortem report (Ext.7), all corroborate the prosecution case. It is the prosecution case that appellant along with his associates took Arjun Yadav towards Karbala and killed him.

22. It is natural conduct that in a case of missing person, one first wants to look and search for amongst relatives or close acquaintances in the village before rushing to lodge a complaint.

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23. The submission of learned counsel for the appellant that identity of the dead body of the deceased has not been established is also belied from the evidence of P.W.4 who identified the dead body to be of his brother Arjun Yadav. Further more his belongings recovered from beneath a tree in Karbala situate very near to river, unmistakenly corroborate the identity of the deceased.

24. That submission of learned counsel for the appellant that the version of P.W.3 of having informed the villagers regarding entanglement of her son with the appellant's wife is unreliable, as no Panchayati took place in this regard. It would appear from the evidence of P.W.3 that she informed the villagers about the entanglement of her son with the wife of the appellant only two to three months prior to the date of occurrence, and it was for the villagers to have called a Panchayti. Merely because the villagers did not call a Panchayati in this regard

would not discredit the statement of the informant which otherwise stood in the test of cross-examination. There may be various valid reasons for the elders not to call a Panchayati, for example, if it involved the reputation of a married woman, or if it is entirely personal and family matter. The issue of entanglement of a married woman with another co-villager is a sensitive and delicate issue and villagers may not like to get involved in it unless and until the grievance is made by a person who is most aggrieved on account of it. The person aggrieved may not like the matter regarding family prestige to be hiked and publicized and be a subject of public discussion.

25. The other issue is whether the photograph could have been used in evidence as the I.O., who recovered the same from the deceased's pocket, has not been examined. The defence no where has disputed the genuineness of the photograph. There has been no suggestion on behalf of the defence that the photograph is manufactured or is a result of photographic trick. The mother of the deceased was a very natural person to identify the photograph of her son and that of the appellant's wife as they resided within 50 yards of each others house, and there was relationship of land lord and tenant as the appellant was Aasami (raiyat) of the deceased.

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26. The other issue is whether in the facts and circumstances narrated above, a case under section 364 of the Indian Penal Code is made out or not. Learned counsel for the appellant submits that use of force or enticement constitutes two important ingredients for forming offence under section 364 of the Indian Penal Code. He further submits that there is no material on record to show that appellant used any force or enticement in calling the deceased from his house. We find the appellant merely called the deceased without any evidence of force or allurement, and he went out with him. There is nothing on record to show that the deceased was lured into going out with appellant or he was induced in any manner to accompany him. There is no evidence on record that the appellant drew him out

from the house forcefully or by making any false plea. In a nut shell, the deceased was not tempted in any manner to go along with the appellant. In this view of the matter, we find that no case under section 364 of the Indian Penal Code is made out against the appellant and as such his conviction under section 364 of the Penal Code and the sentence passed therein are accordingly set aside.

27. So far as sections 302/201 of the Indian Penal Code are concerned, we find that the prosecution has succeeded in proving the same beyond all reasonable doubt. The set of circumstances discussed above form a complete chain unerringly pointing towards the guilt of the appellant who, after committing murder, buried the dead body in the river bed to hide the evidence.

28. In view of the aforesaid findings, we find and hold that the trial court has rightly convicted the appellant under section 302/201 of the Indian Penal Code and sentenced him to under go rigorous imprisonment for life. The appeal in respect of conviction under section 302/201 of the Indian Penal Code stands dismissed. The appellant should surrender before the court below to serve out the remaining period of sentence. His bail bond is cancelled

29. In the result, this appeal fails and the impugned judgment and order of the trial court, so far as conviction and sentence therein under section 302/201 of the Indian Penal Code is concerned, is affirmed.

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(Samarendra Pratap Singh,J)

(Sudhir Kumar Katriar,J)

Patna High Court
July 14, 2008
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